

NO. 3468

IN THE

17

United States Circuit Court of Appeals
FOR THE
NINTH CIRCUIT



E. L. COBB, as Trustee of the Craig
Lumber Co., a Corporation, Bank-
rupt. Petitioner.

vs.

McDONALD-WEIST LOGGING
CO., a Corporation. Respondent.

On Petition for Review of an order of the Dis-
trict Court for Alaska reversing an order of the
Referee in Bankruptcy, expunging claim.



BRIEF FOR THE PETITIONER



J. H. COBB,
Attorney for Petitioner.

ALASKA DAILY CAPITAL, JOB DEPT.

FILED

APR 20 1920

contract on which the claim was based and out of which it grew, was made in Alaska, and was to be performed in Alaska; and that at the time the contract was made, and while the claimant was engaged in business under it in Alaska, it had not complied with the Alaska laws governing foreign corporations doing business in the Territory, and the contract was void, and the claim under it was not a provable claim in Bankruptcy.

The Referee found the facts to be that the claimant was a corporation of the State of Washington. That the contract out of which the claim grew, was made in Alaska, January 2, 1918; that the McDonald-Weist Logging Co. filed in the Office of the Secretary of State for Alaska the following documents and no others, at the respective dates stated:

- (a) Articles of Incorporation, January 28, 1918.
- (b) Appointment of L. J. McDonald as agent and acceptance, January 28, 1918.
- (c) Annual Statement, filed February 16, 1918.
- (d) Annual Statement, filed February 27, 1919.

The Annual Statement filed February 16, 1918, was not verified by the President and Secretary of

the McDonald-Weist Logging Co., nor attested by the directors, and the Annual Statement filed February 27, 1919, was verified by the President and Secretary but not attested by the directors.

The following documents and no others, were filed by the McDonald-Weist Co. in the office of the Clerk of the District Court, at the dates respectively stated:

- (a) Articles of Incorporation, December 12, 1917.
- (b) Consent to be sued, and appointment of L. J. McDonald as agent, December 12, 1917.
- (c) A document attached to (b) filled out in the handwriting of L. J. McDonald which was in form an acceptance of the appointment as agent, but the same was never subscribed, December 12, 1917.
- (d) Annual Statement verified by the President, but not attested by the directors, filed February 11, 1919. (Rec. p. 14-17)

Upon these facts which were undisputed, the Referee held the contract void, and the claim not provable in Bankruptcy, and expunged the claim. (Rec. p. 12)

The McDonald-Weist Co. appealed to the Dis-

trict Court and the facts as found by the Referee were certified to that Court and the appeal was heard on said facts, as established. (Rec. p. ~~14-18~~).

The District Court reversed the ruling of the Referee and remanded the case for further proceedings.

In as much as the question here involved practically settles the controversy, the Trustee has petitioned this Court for a Revision, under the Bankruptcy Act.

The single question of law presented by the record is this: Can a foreign corporation doing business in Alaska, without first having complied with the local laws governing such corporations prove a claim in Bankruptcy for debt growing out of such business? The Referee held it could not; the District Judge held that it could.

The statutes of Alaska bearing upon the subject are Compiled Laws of Alaska, Sections 654, 655, 657, 658, (as amended by Chapter 20, Session Laws of Alaska 1917), and 660, which read as follows:

“Section. 654. All corporations or joint stock companies organized under the laws of the United States, or the laws of any state or territory of the United States, shall, before doing business within the District, file in the office of the Secretary of the District and in the office of the Clerk of the District Court for the division wherein they intend to carry

on business, a duly authenticated copy of their charter or articles of incorporation, and also a statement verified by the oath of the president and secretary of such corporation, and attested by a majority of its board of directors, showing—

“(1) The name of such corporation and the location of its principal office or place of business without the district; and, if it is to have any place of business or principal office within the district, the location thereof;

“(2) The amount of capital stock;

“(3) The amount of its capital stock actually paid in money;

“(4) The amount of its capital stock paid in any other way, and in what;

“(5) The amount of the assets of the corporation, and of what the assets consist, with the actual cash value thereof;

“(6) The liabilities of such corporation, and if any of its indebtedness is secured, how secured, and upon what property.

“Such corporation or joint stock company shall also file, at the same time and in the same offices, a certificate, under the seal of the corporation and the signature of its president, vice-president, or other acting head, and its secretary, if there be one, certi-

fying that the corporation has consented to be sued in the courts of the district upon all causes of actions arising against it in the district, and that service of process may be made upon some person, a resident of the district, whose name and place of residence shall be designated in such certificate, and such service, when so made upon such agent, shall be valid service on the corporation or company, and such agent shall reside at the principal place of business of such corporation or company in the district.”

“Sec. 655. The written consent of the person so designated to act as such agent shall also be filed in like manner, and such designation shall remain in force until the filing in the same offices of a written revocation thereof, or of the consent, executed in like manner. A certified copy of the designation so filed, accompanied with a certificate that it has not been revoked, is presumptive evidence of the execution thereof, and conclusive evidence of the authority of the officer executing it.”

“Sec. 657. If any such corporation or company shall attempt or commence to do business in the district without having first filed said statements, certificates, and consents required by this chapter, it shall forfeit the sum of twenty-five dollars for every day it shall so neglect to file the same; and every contract made by such corporation, or any agent or agents thereof, during the time it shall so neglect to

file such statements, certificates, or consents, shall be voidable at the election of the other party thereto. It shall be the duty of the United States attorney for the district to use for and recover, in the manner of the United States, the penalty above provided, and the same, when so recovered, shall be paid into the Treasury of the United States."

"Section 658. Every such foreign corporation or company shall annually and within sixty days (60), from the first day of January of each year make a report, which shall be in the same form and contain the same information as required in the statement mentioned in Section Six Hundred and Fifty-Four, Chapter Twenty-Three of the Compiled Laws of the Territory of Alaska, which report shall be filed in the office of the Secretary of the Territory of Alaska, and a duplicate thereof in the office of the Clerk of the District Court for the division of the Territory wherein the business of the corporation is carried on."

"Sec. 660. If any such corporation or company shall fail to comply with any of the provisions of this chapter, all its contracts with citizens of the district shall be void as to the corporation or company, and no court of the district, or of the United States, shall enforce the same in favor of the corporation or company so failing."

It will thus be seen that while the McDonald-Weist Co. had apparently intended to comply with the law, and taken some steps in that direction, it had wholly failed to do so, in this:

- 1st. In the Secretary's office,
 - (a) It failed to file articles of incorporation before making the contract.
 - (b) It failed to file its appointment of agent and his acceptance before the contract was made.
 - (c) The annual statements filed were not in compliance with the law and were in effect no statements.

2nd. In the clerk's office the company failed to comply with the law in the following:

- (a) It filed no acceptance of agency.
- (b) It filed no annual statement at all at the time, and during the period the contract was entered into, and was being performed.

A claim against a bankrupt estate, in favor of a foreign corporation, growing out of business done by it, without having first complied with the laws is void and not a provable claim in Bankruptcy.

I. Loveland on Bankruptcy 636.

Brandenburg on Bankruptcy Sec. 323.

In re Montello Brick Works, 163 Fed. 621
Affirmed 172 Fed. 311.

S. C. 174 Fed. 498.

*Buffalo Ref. Mchn. Co. vs. Penn. H. & P.
 Co.* 178 Fed. 696.

La Moine L. & T. Co. vs. Kesterson, 171
 Fed. 980.

Pittsburg Con. Co. vs. W. S. B. Ry. Co. 154
 Fed. 929, 11 L. R. A. (N. S.) 1145.

Tri-State Am. Co. vs. Forest Part, Etc. Co.
 90, S. W. Rep. 1020.

In an oral opinion, rendered by the court below, the decision reversing the Referee was placed upon the ground that the Trustee could not interpose this defence, that such defence was personal to the Bankrupt, the other party to the contract, and as the Bankrupt had interposed no defense, the Trustee could not.

This we think was error, and a misconception of the powers and duties of Trustees in Bankruptcy.

He may object to claims.

Brandenburg on Bankruptcy Sec 653.

Atkins vs. Wilcox, 105 Fed. 595.

He takes all the rights and title of the bankrupt as well as the rights of creditors against adverse claimants to the state.

Brandenburg on Bankruptcy Sec. 724.

Besides under the plain provisions of Sec. 660 Com. L. of Alaska, *supra*, it was the plain duty of the Court to expunge the claim of the McDonald-Weist Co. on its own motion upon the facts being made known.

We respectively ask that the order of the District Court be reversed, and the order of the Referee expunging the claim be affirmed.

J. H. COBB,
Attorney for Petitioner.